

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	Criminal No. 1:18-CR-123
Plaintiff,	)	
	)	
vs.	)	<b>Sentencing Memorandum</b>
	)	
JAMES WINDY BOY,	)	
	)	
Defendant.	)	

The Defendant, James Windy Boy, by and through counsel, respectfully submits this Memorandum in support of Mr. Windy Boy's sentencing recommendation.

**Background**

Mr. Windy Boy was charged in two-counts of a three-count indictment dated August 1, 2019. On June 17, 2019 Mr. Windy Boy entered a guilty plea to count one of the indictment.

Mr. Windy Boy was initially arrested on August 6, 2018 and was released on conditions on August 9, 2018. On May 9, 2019 Mr. Windy Boy was arrested for violating his conditions of release and was detained until July 17, 2019 when he was again released on conditions. Counsel has not been made aware of any violations, alleged or in fact, to the conditions of release since July 17, 2019.

**Voluntary Surrender**

Generally, pursuant to 18 U.S.C. § 3143, the Court should order a person awaiting execution of sentence remanded into custody **unless** the judicial officer finds by clear and

convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c). 18 U.S.C. § 3142(b) allows the court to release on personal recognizance or an unsecured appearance bond, §3142(c) allows the court to impose release conditions.

Mr. Windy Boy has maintained contact with his attorney throughout the pendency of this case. Mr. Windy Boy has not missed any proceeding in the instant case. Mr. Windy Boy is from North Dakota and has essentially lived here his entire life. His entire family, including his mother, siblings, and his children live in North Dakota. Mr. Windy Boy is not a flight risk.

Mr. Windy Boy has one conviction in North Dakota State court for reckless driving from an event occurring in 2013. Mr. Windy Boy has numerous convictions in Fort Berthold Tribal Court. All of the convictions in Tribal Court appear to relate to the use or consumption to alcohol or controlled substances.

Mr. Windy Boy respectfully requests he be allowed to self-surrender to serve his sentence and agrees to abide by any condition the court feels necessary to alleviate its concern of danger to the safety to persons or community.

### **Guideline Objections**

Mr. Windy Boy has no objections to the presentence investigative report and agrees pursuant to the report that his guideline is as follows:

Base offense level -	26
Safety Valve -	-2
Acceptance of Responsibility -	-2
Timely Notification of Plea -	<u>-1</u>
Total Offense Level -	21

Mr. Windy Boy also agrees he is a criminal history score of zero resulting in a criminal history category of I.

Offense level 21, criminal history category I gives a guideline range of 37 – 46 months.

Dated: September 11, 2019.

/s/ Stormy Vickers  
Stormy Vickers (ND 06539)  
Attorney for Defendant  
112 N University Dr., Suite 390  
Fargo, ND 58102  
T: 701.365.4884